

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES

In The Matter Of Determining Whether There)
Has Been A Violation Of The Mortgage)
Practices Act By:)

No. 97-087-C01

Trinity West Financial, Inc., Rudy Diligencia,))
Owner and President, and Lupe Fox,)
Secretary and Manager)

STATEMENT OF CHARGES AND
NOTICE OF INTENTION TO
ENTER AN ORDER TO CEASE AND
DESIST

Respondents)

I. STATEMENT OF CHARGES

Pursuant to RCW 19.146.220, the Director of the Department of Financial Institutions ("Director") is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act ("Act"). After having conducted an investigation, and based upon the facts available as of August 19, 1997, the Director institutes this proceeding and finds as follows:

II. FACTUAL FINDINGS

A. In June 1994, the Department issued a Mortgage Broker license pursuant to chapter 19.146 RCW to JE Mortgages, Inc., located at 13401 Bel-Red Road, #B-6, Bellevue, Washington 98005. Rudy S. Diligencia ("Diligencia") was the owner and designated broker of JE Mortgages, Inc.

B. On October 31, 1996, the Department received a letter from Diligencia indicating that he had changed the name of the corporation from JE Mortgages, Inc. to Trinity West Financial, Ltd. By letter dated November 4, 1996, the Department notified Diligencia that mortgage broker

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2 licenses are not transferable and that due to the apparent change in control, Diligencia was
3 required to submit a new application pursuant to WAC 208-660-110. The letter also informed
4 Diligencia that the Department considers it a violation of the Act for non-exempt brokers to
5 originate, or solicit for origination, single family residential mortgages without a valid license.
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7 The Department also provided a current copy of the Act and an application package.

8 C. On December 9, 1996, the Department received a mortgage broker application in the
9 name of Trinity West Financial, Inc. ("Trinity"). The application indicated Trinity would operate
10 from the same address as JE Mortgages. The application identified Diligencia as the President
11 and Chief Executive Operator of Trinity.
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13 D. By letter dated January 8, 1997, the Department notified Diligencia that the Trinity
14 application package was incomplete. Among other things, the letter noted the application
15 contained no information regarding the identity of the designated broker. The letter also informed
16 Diligencia that pursuant to RCW 19.146.200(1) the Department considers it a violation of the Act
17 for non-licensed, non-exempt mortgage brokers to originate, or solicit for origination single-
18 family residential mortgages. On or about February 6, 1997, the Department received a second
19 license application package from Rudy Diligencia. Lupe Fox ("Fox") was identified in Trinity's
20 Articles of Incorporation as the corporation's secretary, and in the application package as
21 operations manager.
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23 E. On or about February 4, 1997, the Department received a copy of a Mortgage Broker
24 License purporting to be issued to Trinity West, Inc., as licensee and dated "this 26th day of
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2 November 12, 1996." The license appeared to be an altered version of the license previously
3 issued to JE Mortgages, Inc.

4 F. On February 7, 1997, the Department received information from Weyerhaeuser
5 Mortgage, a mortgage company located in Woodland Hills, California, that Trinity had produced a
6 license for approval as a Weyerhaeuser broker and had been submitting loans to Weyerhaeuser for
7 underwriting review.
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9 G. On April 1, 1997, the Department received from Weyerhaeuser Mortgage four
10 mortgage loan applications that Trinity had submitted to Weyerhaeuser Mortgage for underwriting
11 review and approval. The first was dated January 28, 1997, and identified Diligencia as the
12 interviewer and listed Trinity as the employer. The second was signed by the loan applicant on
13 December 18, 1996, and listed Pauline Ferber as the interviewer and Trinity as the employer. The
14 third, dated January 28, 1997, identified Fox as the interviewer and Trinity as her employer. The
15 fourth was signed by Fox as the interviewer and identified Trinity as her employer.
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17 H. By letter dated March 6, 1997, Diligencia's attorney, Gregory L. Ursich, notified the
18 Department that Diligencia wished to withdraw the application for mortgage broker license.
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21 **III. GROUNDS FOR ENTRY OF ORDER**

22 A. Pursuant to RCW 19.146.200, it is unlawful for a person subject to the Act's licensing
23 requirements to engage in the business of a mortgage broker without first obtaining and
24 maintaining a license. Respondents violated this provision when on or after October 1, 1996,
25 Respondents held themselves out as being able to make a residential mortgage loan or assist a
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2 person in obtaining or applying to obtain a residential mortgage loan on behalf of Trinity. The
3 information received from Weyerhaeuser Mortgage indicates Respondents violated RCW
4 19.146.200 on at least four occasions.

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6 B. Pursuant to RCW 19.146.220(2)(a), the Director may deny applications for licenses for
7 any violation of RCW 19.146.0201(1) through (9). RCW 19.146.0201(1) provides that it is
8 unlawful for a loan originator or mortgage broker required to be licensed under this chapter to
9 directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or
10 lenders or to defraud any person. Pursuant to RCW 19.146.0201(2) it is unlawful for a loan
11 originator or mortgage broker required to be licensed under the Act to engage in any unfair or
12 deceptive practice toward any person. Respondents violated RCW 19.146.0201(1) and (2) when
13 they provided a falsified mortgage broker license to Weyerhaeuser Mortgage, thereby
14 misrepresenting that they were authorized to engage in the business of a mortgage broker in the
15 state of Washington.
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17 C. Pursuant to WAC 208-660-160(1)(f), (j) and (n), the Director may deny a license
18 application if the applicant or any principal or designated broker of the applicant has omitted,
19 misrepresented or concealed material facts in obtaining a license; aided or abetted an unlicensed
20 person to practice in violation of the Act; or performed an Act of misrepresentation or fraud in any
21 aspect of the conduct of the mortgage broker business or profession. Respondents' conduct
22 described above constitutes grounds to deny Trinity's license pursuant to WAC 208-660-
23 160(1)(f),(j) and (n).
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D. Pursuant to RCW 19.146.220(2)(d), the Director may issue an order directing a licensee to cease and desist from conducting business in a manner that violates any provision of the Act. Respondents originated loans or assisted others in applying for residential mortgage loans when Trinity was not properly licensed. Respondents' conduct constitutes grounds for issuance of a cease and desist order directing that Respondents cease engaging in the business of a mortgage broker until they are properly licensed.

E. Pursuant to RCW 19.146.220(2)(e), the Director may issue an order removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under this Act for violations of RCW 19.146.0201(1) through (9) or (13). Diligencia and Fox violated RCW 19.146.0201(1) and (2) when they provided a falsified mortgage broker license to Weyerhaeuser Mortgage and when they engaged in the business of a mortgage broker without a license.

F. Pursuant to RCW 19.146.220(3), each days continuance of a violation or failure to comply with any directive or order of the Director is a separate and distinct violation. WAC 208-660-160 provides that each violation subjects a person to a fine of up to \$100.00 per day per violation. Pursuant to RCW 19.146.220(2)(c), the Director may impose fines for any violations of RCW 19.146.0201(1), (2) or RCW 19.146.200. Each violation alleged above constitutes grounds to assess a civil penalty of \$100.00 per day for each violation.

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2 **IV. NOTICE OF INTENTION TO ENTER AN ORDER**

3 Respondents violations of the Act as set forth above constitute the basis for the entry of an
4 order under RCW 19.146.220. Therefore, it is the Director's intention to ORDER:
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6 A. That Respondents cease and desist from engaging in the business of a mortgage broker
7 unless they first obtain a license pursuant to the Act;

8 B. That Trinity's pending application for a mortgage broker license be denied;

9 C. That Respondents pay a fine of \$16,700.00 calculated as follows:

10 1. \$8,000.00 for four violations of RCW 19.146.200, originating loans
11 without a license, calculated at \$100.00 per day per violation for twenty days, counted from the
12 date of the Department's notification, January 8, 1997, to the date of at lease two of the originated
13 loans, January 28, 1997; and
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15 2. \$8,700.00 for one violation of RCW 19.146.0201, prohibited practices as
16 discussed in this order, calculated at \$100.00 per day for eighty seven days, counted from the date
17 of the falsified license, November 12, 1996, to the date of the Department's discovery of the
18 falsified license, February 7, 1997.
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20 D. That Respondents, their officers, employees, and agents shall not remove from their
21 Washington places of business, nor mutilate, destroy, or secrete any books, records, computer
22 records, or other information relating to Respondents mortgage broker business;

23 E. That Respondents be prohibited from participation in the conduct of the affairs of a
24 licensed mortgage broker for at least seven years; and
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2 F. That Respondents pay an examination fee of \$360.00 for 8.0 hours of
3 examination/investigation at \$45.00 per hour.
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5 **V. AUTHORITY AND PROCEDURE**

6 This Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist
7 is entered pursuant to RCW 19.146.220, RCW 19.146.230 and chapter 34.05 RCW. The
8 Respondents may make a written request for hearing as set forth in the Notice of Opportunity to
9 Defend and Opportunity for Hearing accompanying this Statement of Charges and Notice of
10 Intent to Enter an Order.

11 DATED this 19th day of August, 1997.
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14 MARK THOMSON
15 Assistant Director
16 Division of Consumer Services
17 Department of Financial Institutions
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